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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055374
Party	Plaintiff Joel L. Beling d/b/a Supa Characters Pty Ltd
Correspondence Address	JOEL L BELING 1 MIRBOO COURT DALLAS VICTORIA, 3047 AUSTRALIA joelbeling@hotmail.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Joel Beling
Filer's e-mail	joelbeling@hotmail.com
Signature	/joel beling/
Date	09/07/2012
Attachments	Petitioner's Motion to Exceed the Page Limit in its Second Amended Petition to Cancel.pdf (5 pages)(154834 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. 3,372,884 (COLORWORX)
Registered January 22, 2008

Opposition No. 91203884

Ennis Inc.

v.

Joel L. Beling d/b/a Supa Characters Pty Ltd

**PETITIONER’S MOTION
FOR LEAVE TO EXCEED
THE PAGE LIMIT IN ITS
SECOND AMENDED
PETITION TO CANCEL**

Cancellation No. 92055374

Joel L. Beling d/b/a Supa Characters Pty Ltd

v.

Ennis, Inc.

**PETITIONER’S MOTION FOR LEAVE TO EXCEED THE PAGE LIMIT IN
ITS SECOND AMENDED PETITION TO CANCEL**

To: Ennis Inc and TTAB.

Petitioner, JOEL L. BELING d/b/a Supa Characters Pty Ltd (“Petitioner”), pursuant to the Federal Rules of Civil Procedure, hereby files this Motion for Leave to Exceed the Page Limit in its Second Amended Petition to Cancel, to the extent to which such a Motion is deemed necessary by the Board, and would show the Board as follows:

1. Petitioner's Second Amended Petition to Cancel, not including the exhibit list, certificate of service and exhibits, is 89 pages in length.
2. While there is no prescribed page limit for a Petition to Cancel, Petitioner files this Motion in response to Registrant's concerns regarding the page limit expressed in its Motion to Dismiss.
3. The following is reproduced verbatim from Petitioner's Response to Registrant's Motion to Dismiss and is relied upon in full in this Motion:

...Petitioner submits that Registrant has misunderstood the pleading Rules enshrined in the Federal Rules of Civil Procedure. Registrant cites rules which are applicable in regular, standard or non-special matters. As this proceeding involves allegations of trademark fraud (indeed many allegations of trademark fraud), it falls under the category of "Pleading Special Matters," Fraud or Mistake, provided for in Rule 9(b):

FRAUD OR MISTAKE; CONDITION OF MIND. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

As such, the usual prescriptions do not apply because fraud is a very serious allegation and Registrants, as a matter of law and of fairness, are entitled to know the precise allegations in respect of the fraud they have allegedly committed: *American Flange & Manufacturing Co. v. Rieke Corp.*, 80 USPQ2d 1397 (TTAB 2006), *Media Online Inc. v. El Clasificado Inc.*, 88 USPQ2d 1285 (TTAB 2008), and *Asian and Western Classics B.V. v.*

Selkow, 92 USPQ2d 1478 (TTAB 2009). Indeed, as Registrant itself argues in the Motion:

the Federal Rules of Procedure impose a heightened pleading standard for such allegations. See Fed.R.Civ.P. 9(b); and *In re Bose Corp.*, 580 F.3d 1240, 1243 (Fed. Cir. 2009) (“A party seeking cancellation of a trademark registration for fraudulent procurement bears a heavy burden of proof.”)

It is respectfully submitted that Registrant’s submissions in the Motion are inherently contradictory and nonsensical, for on the one hand Registrant argues that Petitioner’s allegations should be dismissed for insufficient particularity, while on the other, Registrant contends that Petitioner’s pleading is overparticularized. Which is it? Too short or too long?

Another reason justifying Petitioner’s 89-page pleading is that Plaintiffs making fraud allegations have even had their matters dismissed on the basis of insufficient particularity: See, *supra*, *American Flange & Manufacturing Co.*, *Media Online Inc.*, and *Asian and Western Classics B.V.*

More importantly, Petitioner submits that its 89-page pleading is a direct result of Registrant’s own fraudulent acts and omissions. If Registrant had not committed fraud on the USPTO as particularized in Petitioner’s Second Amended Petition to Cancel, then there would be no need for an 89-page pleading. Petitioner submits that Registrant’s submissions with respect to the nature and length of pleadings under the FRCP are artificial and wrong as a matter of law, since, if correct, they lead to the absurd and farcical

result that a corporation can commit as much fraud as it wanted, yet Plaintiffs were only able to allege a finite, artificial amount as prescribed by the FRCP pleading rules. Thus, it is respectfully submitted that Rule 9(b) of the FRCP, as well as Registrant's own allegedly fraudulent conduct, necessitated the 89-page pleading and that this is entirely legally permissible given the serious nature of fraud allegations.

4. Finally, Petitioner refers the Board to the substantive allegations and submissions made in its Second Amended Petition to Cancel [Doc #18] and Motion to Compel Discovery Responses [Doc #16] with respect to Registrant's and Registrant's legal counsel's fraudulent, deceptive and otherwise blameworthy conduct, which are incorporated herein by reference.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays, to the extent the Board deems such Prayer necessary, that Petitioner be granted leave to exceed the page limit in its Second Amended Petition to Cancel.

Dated: September 7, 2012

Respectfully submitted,

/joel beling/

Joel Beling
1 Mirboo Court
Dallas, Victoria, 3047
Australia
(03) 8307 6932 (telephone)
0405 329 078 (cell)
joelbeling@hotmail.com
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PETITIONER’S MOTION FOR LEAVE TO EXCEED THE PAGE LIMIT IN ITS SECOND AMENDED PETITION TO CANCEL** was served on all parties, this the 7th day of September, 2012, by sending the same electronically through the Electronic System for Trademark Trials and Appeals (“ESTTA”) and by email, as consented to by the Registrant’s Attorneys, to the following:

Scott A. Meyer
CHALKER FLORES, LLP
smeyer@chalkerflores.com

Thomas G. Jacks
CHALKER FLORES, LLP
tjacks@chalkerflores.com
ATTORNEYS FOR REGISTRANT

/s/ Joel L. Beling
Joel L. Beling